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4 Attorney for Debtors

5 **UNITED STATES BANKRUPTCY COURT**  
6 **NORTHERN DISTRICT OF CALIFORNIA**

7 In re:

8 Julio P Julao Jr.

9 Elisa P Julao

10 Debtors

Case No. 09-31756 DM Ch. 13

**MEMORANDUM re MOTION TO VALUE  
SECURITY**

Hearing Date: 10/14/09 (**TENTATIVE – TO BE  
HEARD ONLY IF REQUESTED**)

Time: 2:30 PM

Judge: MONTALI

Place: Crt Rm 22 – USBC 235 Pine Street San  
Francisco

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12  
13 **MEMORANDUM POINTS and AUTHORITIES IN SUPPORT**  
14 **OF MOTION TO VALUE SECURITY**  
**(LIEN STRIP REAL PROPERTY)**

15 **INTRODUCTION**

16 The Debtors, above-named, filed a motion to value security affecting the residential real  
17 property located at 3906 Savannah Ct South San Francisco, CA 94080–3947 (PROPERTY),  
18 pursuant to 11 U.S.C. § 506(a), Fed. R. Bankr. P. 3012, and applicable local rules and procedures as  
19 identified in the Notice accompanying this motion. The Movant seeks establish that **WELLS**  
20 **FARGO BANK NA** (LIEN HOLDER) holds a wholly unsecured lien. In so doing intends to modify  
21 the rights of the above-named creditor under 11 U.S.C. § 1322(b)(2). Further, Movant seeks to  
22 establish that LIEN HOLDER's lien is wholly unsecured so as to classify LIEN HOLDER as a General  
23 Unsecured Claim subjected to the rights, obligations and payment under the Debtors' Chapter 13 Plan.  
24 In effect, to "lien-strip" LIEN HOLDER's lien, the result of which would terminate and extinguish said  
25 claim and lien upon completion by Debtors of the Chapter 13 plan.  
26  
27

**FACTS**

1 The debtors filed a Petition for Relief under Chapter 13 on June 26, 2009. The PROPERTY  
2 which is the subject of the motion is the debtors' residence. The holder of a first mortgage against the  
3 PROPERTY is WELLS FARGO HOME MORTGAGE, INC., holding a secured claim in the  
4 approximate amount of \$664,000.00. The holder of a second mortgage against the PROPERTY is  
5 **WELLS FARGO BANK NA**, holding a claim in the approximate amount of \$108,072.24. The  
6 value of the PROPERTY, as evidenced by the supporting declaration and appraisal, is \$545,000.00as  
7 of the petition filing date and pursuant to the appraisal conducted on July 17, 2009. The value of the  
8 PROPERTY, therefore is less than the total encumbrance of the holder of the first mortgage leaving no  
9 equity available to secure LIEN HOLDER's security.

### 11 **LAW & ARGUMENT**

12 The patent issue of whether a debtor can value a creditor's security for the practical purpose of  
13 establishing the value of the creditor's claim is found under 11 U.S.C. § 506(a). Section 506(a)(1) in  
14 pertinent part reads: *An allowed claim of a creditor secured by a lien on property in which the estate*  
15 *has an interest, ... is a secured claim to the extent of the value of such creditor's interest in the estate's*  
16 *interest in such property, ... and is an unsecured claim to the extent that the value of such creditor's*  
17 *interest ... is less than the amount of such allowed claim. Such value shall be determined in light of the*  
18 *purpose of the valuation and of the proposed disposition or use of such property, and in conjunction*  
19 *with any hearing on such disposition or use or on a plan affecting such creditor's interest.* Here the  
20 debtor has invoked the rights under Section 506 and has established that the value of the security is less  
21 than the amount of the claim in that the value of the security holds sufficient equity only to cover the  
22 interest of the holder of the first mortgage.

24 The underlying issue of whether a debtor may modify the rights of a secured creditor for the  
25 purposes of classifying the creditor as a General Unsecured Creditor to be paid under a Chapter 13 Plan  
26 as a general unsecured claim, in other words to "lien-strip, is determined under combined reading of 11  
27 U.S.C. § 1322(b)(2) and 11 U.S.C. § 506(a). The first question to consider is whether the creditor's lien

1 is partially secured. The anti-modification clause of 11 U.S.C. § 1322(b)(2) prohibits lien-stripping if,  
2 presumably, one dollar worth of equity attaches to the lien. *Nobelman v. American Savings Bank*, 508  
3 U.S. 324, 113 S.Ct. 2106, 124 L.Ed.2d 228 (1993). Nobleman holding in summary that a Chapter 13  
4 debtor may not bifurcate a secured creditor's lien which is secured only by the debtor's residential real  
5 property.

6 The second question to consider is whether the creditor's security is wholly unsecured with not  
7 one dollar of equity attaching to its lien. If, as is in the instant case, there is no equity to cover any of  
8 the creditor's lien, then the anti-modification clause of 11 U.S.C. § 1322(b)(2) does not prohibit  
9 modifying the lien rights of the creditor. The plain language of 11 U.S.C. § 1322(b)(2) provides that  
10 anti-modification protection is only available to holders of secured claims. *Zimmer v. PSB Lending*  
11 *Corporation (In re Zimmer)*, 313 F.3d 1220, 9th Cir (2002) See Also *Lane v. W. Interstate Bancorp (In*  
12 *re Lane)*, 280 F.3d 663, 667-69 (6th Cir.2002); *Pond v. Farm Specialist Realty (In re Pond)*, 252 F.3d  
13 122, 126 (2d Cir.2001); *Tanner v. First-Plus Fin., Inc. (In re Tanner)*, 217 F.3d 1357, 1359-60 (11th  
14 Cir.2000); *McDonald v. Master Fin., Inc. (In re McDonald)*, 205 F.3d 606, 611 (3d Cir.2000); *Domestic*  
15 *Bank v. Mann (In re Mann)*, 249 B.R. 831, 840 (B.A.P. 1st Cir.2000); *Lam v. Investors Thrift (In re*  
16 *Lam)*, 211 B.R. 36 (1997). Thus, here creditor's security is without any value, and as such is not  
17 secured. The security being unsecured, the claim of the creditor, notwithstanding a lien, is wholly  
18 unsecured and can therefore be modified under Section 1322.

20 The question is thus answered. The value of the PROPERTY is less than the value of the first  
21 mortgage. There is no equity available to secure the lien of LIEN HOLDER. The value of LIEN  
22 HOLDER's security is zero, thus the underlying claim of LIEN HOLDER is unsecured.

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1 **CONCLUSION**

2 The Debtor has established, by competent evidence, inter alia, a valid real property appraisal  
3 performed by a qualified professional licensed by the State of California to provide such appraisals, that  
4 the value of LIEN HOLDER's security is unsecured.

5 WHEREFORE, Movant prays for an order approving the motion.

6 /s/ Leon Jon Bonney  
7 Leon Jon Bonney  
8 Attorney at Law SBN: 109010

Dated: JULY 31, 2009